The tobacco industry must be held to account for health care costs, compensation to victims, corruption, illicit trade, environmental damage, food insecurity, human rights violations, and more.

**Frequently Asked Questions**

**Summary**

The tobacco industry must be held to account for health care costs, compensation to victims, corruption, illicit trade, environmental damage, food insecurity, child labor, and more. Under the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control (WHO FCTC), governments are called on to adopt stronger tobacco control laws, create robust legal frameworks, and take action to make the tobacco industry pay compensation for the harms it has caused.

The tobacco industry must not be granted incentives to run its business. To enable corporate accountability, governments must demand transparency from the tobacco industry and adopt policies to resist its influence. Due to limitations of legal systems in many jurisdictions and the escalated impact of tobacco harms during COVID-19, the most rational way to make the tobacco industry pay in a manner that responds to the crisis is to increase and dedicate taxes to a wide range of areas where the industry has caused harm, including creating compensation mechanisms to ensure fair distribution to beneficiaries. This would support countries’ COVID-19 responses as well as help achieve UN Sustainable Development Goals (UN SDGs).
I. What is accountability and liability in the context of the tobacco industry?

Corporate accountability is generally defined by the ability to hold a corporation to account for its operations by those it has affected. Liability involves making a corporation legally answerable.

In the context of the WHO FCTC, a global treaty which is embodied in the UN SDGs, “liability” is interpreted broadly, ranging from accountability to liability. The broad scope is that corporate liability is part of a broader governance system where the role of regulation and corporate governance is key in ensuring compliance with laws. The coverage ranges from the availability and enforcement of policies/measures to the actions taken to make it liable for harms caused by its products or behavior. Based on the Reporting Instrument of the WHO FCTC, this covers:

A. Policies, laws, or measures:
1. Criminal liability provisions in tobacco control or other laws covering tobacco control or civil liability provisions in general and/or pertaining specifically to tobacco control; and,
2. Criminal or civil liability provisions that provide for compensation for relevant costs.

B. Actions taken against tobacco companies or the tobacco industry:
1. Criminal or civil action taken by any person (including private persons) against any tobacco companies as to health effects of tobacco use; and,
2. Any government action (including administrative or other action) taken against the tobacco industry for reimbursement of relevant costs related to tobacco use.

II. Why are accountability and liability important during the COVID-19 pandemic?

Box 1. Links between smoking and COVID-19

The WHO and health experts have cautioned that tobacco use carries risks of COVID-19 transmission/infection, and leads to worse outcomes in those diagnosed with COVID-19, including admission to the intensive care unit, the need for mechanical ventilation, and death. Smoking weakens the immune system, making it less able to fight infections and increases the risk of viral and bacterial respiratory infections. Smoking, vaping, and waterpipe smoking pose risk of transmission from the hand-to-mouth action and sharing of mouthpieces, or vape that could carry the virus. COVID-19 also endangers the life of those with pre-existing conditions like cancer, heart disease, stroke, lung disease, diabetes, and chronic obstructive pulmonary disease, for which smoking is a major risk factor.

The COVID-19 pandemic is a tremendously difficult time for governments. The tobacco industry, despite giving an impression of being a benefactor, has made governance more difficult during the crisis:

• It resisted lockdown measures in many countries, insisting that its products were “essential” to the extent of filing cases, and endangering the health of its workers.
• It obscured facts about the dangers of smoking with flawed information on the benefits of nicotine and vaping.
• It laundered its corporate image with donations and with publicity stories about vaccine development.
• It accelerated marketing of its products to the youth, even brazenly placing its brand logos on facial masks flouted by social media influencers.
• It demanded compensation for smuggling even when it is complicit in illicit trade.
III. Why make the tobacco industry pay?

Smoking is the leading cause of preventable deaths worldwide. The tobacco industry, which is dominated by four large producers outside China (i.e., PMI, BAT, JTI, ITG), has now admitted that its products are so harmful that it needs to shift its business to become “less harmful,” but it has yet to be held to account for the global scourge it has already created. The industry has employed “decades of duplicity and deception” to market its products and is seen repeating the same tactics to market its new products under the guise that they are safer. Among others, the tobacco industry needs to pay for:

1. **Health costs:** The tobacco industry sells products that kill up to half of its users when used as intended, with a toll of 8 million deaths every year, costing the world US$1.4 trillion per year in health care costs and productivity losses. Over 50 chemicals found in cigarettes are known to cause cancer (e.g., 90% of lung cancers), chronic obstructive pulmonary diseases (COPD), and tobacco-related diseases that require critical care. Critical care is modest in low-income settings, and a single day's use of mechanical ventilators can cost more than a month's income.

2. **Long-term impact on the youth:** About 1.3 million children who work in tobacco fields are exposed to green tobacco sickness and deprived of schooling. Among the young, smoking and exposure to secondhand smoke are associated with learning problems/cognitive impairment, and the effect of nicotine exposure can become permanent. Nicotine and nicotine dependence are also associated with worsened anxiety, irritability, and impulsivity in young adults. Transnational tobacco companies (TTCs) are known to have researched the effects of manipulating nicotine doses on the brain.

3. **Poverty:** Tobacco products cause chronic diseases that are costly to treat, and premature deaths caused by tobacco put financial burdens on families. Addiction to tobacco products depletes the budgets of poor families; in some cases, more is spent on tobacco than on essentials, including nutritious food and education. Further, contract growing schemes of large tobacco dealers keep farmers in debt.

4. **Food insecurity:** Tobacco growing takes up large tracts of land that can be used for food production. Tobacco crops strip soil nutrients faster than other crops, making the land less productive for growing food crops. Due to the toxicity of tobacco growing and the net harm it causes, governments have committed to shift tobacco growing to alternative livelihoods.

5. **Environmental damage:** Growing and curing tobacco cause “aggressive” deforestation especially in low- and middle-income countries (LMICs). Cigarette butts are “the most widely littered product globally”—4.5 trillion are discarded yearly, comprising around 15% of the total debris collected worldwide. Toxins from butts and tobacco pesticides leach into water sources, and have serious implications on drinking water and aquatic life.

6. **Complicity in illicit trade:** Around 9% of cigarettes in the world are smuggled. Large transnational tobacco companies (TTCs) have been investigated for their complicity in smuggling and have been made to pay substantial sums in some jurisdictions. Sixty to seventy percent (60-70%) of seized illicit cigarettes were legally manufactured by major TTCs but have been diverted into illegal markets. Research also shows that TTCs are “over-producing products in some markets and over-supplying to others, both in the knowledge that excess products will end up on the illicit market.”

7. **Human rights violations:** The tobacco industry “flagrantly violates human rights.” Because the nature of tobacco is immensely harmful, production and marketing of tobacco products are considered irreconcilable with the human right to health and must be ceased. The tobacco industry’s supply chain is fraught with poor labor practices including exploitation of child labor.

8. **Disinformation and fraud:** Large TTCs have a history of spreading public disinformation to undermine tobacco control policy. In some jurisdictions, this amounts to fraud. In the U.S., this behavior constitutes a factor in the violation of the Racketeer Influenced and Corrupt Organizations (RICO) Act. For instance, tobacco companies have funded lawyers, scientists, and public relations agencies to conceal the harms caused by smoking and secondhand smoke in order...
to counter smoke-free regulations. They also fund research that exaggerates the magnitude of illicit trade to counter tobacco tax increases.\textsuperscript{66} Tobacco companies continue to invest in research that propagates this practice.\textsuperscript{67} The industry also uses its so-called corporate social responsibility (CSR) actions around the environment and child labor\textsuperscript{68} to obscure its devastating impact on society.\textsuperscript{69}

9. Lobbying, interference, and corruption: TTCs aggressively lobby policymakers to gain a favorable business environment\textsuperscript{70} even to the extent of paying bribes.\textsuperscript{71} Governments consider such industry interference to be the greatest obstacle to tobacco control implementation.\textsuperscript{72} Moreover, TTCs give an impression of promoting anti-corruption\textsuperscript{73} even when proven to be guilty under racketeering and corruption laws.\textsuperscript{74} They also continue to engage in acts that are opposed to business integrity.\textsuperscript{75} For instance, they give gifts to public officials and hire former public officials,\textsuperscript{76} resulting in violations of ethical standards set by the global tobacco control treaty.\textsuperscript{77}

10. Cost of legal challenges: The tobacco industry has launched numerous cases to attack tobacco control legislation,\textsuperscript{78} resulting in significant delays in the passage of life-saving measures\textsuperscript{79} in at least thirty (30) countries in the past decade.\textsuperscript{80} These exclude cases filed to avoid taxes, claim tax exemptions, and enjoy certain privileges. It has abused dispute settlement proceedings,\textsuperscript{81} and despite tobacco control victory in trade and investment fora,\textsuperscript{82} has led to significant costs\textsuperscript{83} and global delays in adoption of packaging laws.\textsuperscript{84}

The economic burden of tobacco far outweighs the benefits from tobacco taxes even in countries that dedicate certain portions of their taxes to health programs or sports in response to tobacco-related harms. In most countries that allocate excise taxes for health or sports, the contribution of total tobacco excise taxes in relation to economic costs is less than 10%, and only a nominal percentage of the tobacco excise is earmarked for the aforementioned programs (see Table 1).

**Table 1. Economic costs vs. tax**

<table>
<thead>
<tr>
<th>Country</th>
<th>Economic Cost of Tobacco (annual) in million, US$\textsuperscript{85}</th>
<th>Tobacco Total Excise (Specific &amp; Ad Valorem) in million, US$\textsuperscript{86}</th>
<th>Percent of Tobacco Total Excise Allotted to Programs\textsuperscript{87}</th>
<th>Beneficiary Programs/Activities relating to Health or Sports\textsuperscript{88}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cape Verde</td>
<td>120</td>
<td>0.99</td>
<td>100%</td>
<td>Sports and health</td>
</tr>
<tr>
<td>Colombia</td>
<td>3,226</td>
<td>298</td>
<td>10%, 16%\textsuperscript{89}</td>
<td>National health insurance program, sports</td>
</tr>
<tr>
<td>Costa Rica</td>
<td>186</td>
<td>53</td>
<td>100%</td>
<td>Prevention/treatment of diseases related to tobacco use, cancer treatment, harmful use of alcohol, and sports</td>
</tr>
<tr>
<td>Estonia</td>
<td>943</td>
<td>229</td>
<td>3.5%</td>
<td>Cultural/sports endowment, physical fitness</td>
</tr>
<tr>
<td>Gabon</td>
<td>270</td>
<td>21</td>
<td>2%</td>
<td>Tobacco control</td>
</tr>
<tr>
<td>Guatemala</td>
<td>405</td>
<td>47</td>
<td>100%</td>
<td>Health programs</td>
</tr>
<tr>
<td>Indonesia</td>
<td>196,218</td>
<td>10,884</td>
<td>2%, 37.5%\textsuperscript{90}</td>
<td>Social and economic programs, national health insurance plan, health</td>
</tr>
<tr>
<td>Iran</td>
<td>5,261</td>
<td>210</td>
<td>2%</td>
<td>Tobacco control, education, youth affairs, sports</td>
</tr>
<tr>
<td>Lithuania</td>
<td>8,418</td>
<td>340</td>
<td>1%</td>
<td>Physical education, sport support fund</td>
</tr>
</tbody>
</table>
IV. What does the FCTC recommend for holding the tobacco industry accountable and liable?

Overall, the FCTC provides governments a minimum standard of behavior they should impose on the tobacco industry, including increasing taxes and graphic warnings, prohibiting misleading packaging, and more. Governments must impose these standards and hold the industry to account for violating them. Governments must also ensure that compensation is afforded to those wronged or harmed.

FCTC guidelines provide that governments should also require the tobacco industry and those working to further its interests to be transparent, and that governments should penalize it for inaccurate or false disclosures. Governments should also exclude it from benefits or incentives typically granted to other sectors.

Because issues relating to liability are an important part of comprehensive tobacco control, the FCTC requires governments to consider actions to deal with tobacco industry liability, including compensation. Governments should cooperate with each other in terms of information exchange and assistance in legal proceedings, and can consider international approaches and mechanisms of assistance in relation to liability.

To effectively fulfill their duty to protect public health policies, governments must also raise awareness about the tobacco industry’s motives and tactics, avoid conflicts of interest, limit engagements, and de-normalize its so-called CSR.
**Box 2. Actions to hold the tobacco industry accountable and liable under the WHO FCTC**

Based on treaty documents, the following have been identified as important actions to take to hold the tobacco industry accountable and liable under the WHO FCTC:

I. Regulate/impose obligations for implementation of substantive articles, ensure compliance, and impose liability for non-compliance (Article 5.3, Articles 6-11, 13, 15-18). Take action to ensure compliance including liability for non-compliance or violations.

II. Adopt a strong legal framework for liability that reaches all legal persons involved, (e.g., including taking into account domestic and international mechanisms to exact corporate accountability).

III. Require compensation for harms, e.g., take action to recoup costs/seek compensation or to facilitate access to justice for victims (Article 19).

IV. Take action towards preventive measures:
   a. Require information to facilitate enforcement (Article 5.3).
   b. Adopt clear codes or guidance in dealing with the tobacco industry and those furthering its interests: Avoid conflicts of interest, limit engagements, reject partnerships and so-called CSR (Article 5.3).
   c. Remove or deny benefits for the tobacco industry (Article 5.3).

Treaty implementation tools for liability include a civil liability toolkit for civil suits to recoup health care costs or help victims gain access to courts to seek compensation. It also includes model rules and legislation to facilitate attaining justice in courts.102

Because legal systems vary, liability is framed broadly and goes beyond civil litigation. Treaty tools are not available for the whole spectrum of liability and compensation. However, standards do exist for the liability of legal persons in the relevant international conventions and related instruments. Standards also exist for legislation and practices around financial crimes, corruption, and environmental damage. To ensure the effectiveness of laws, reviewing policies in light of international conventions was specifically encouraged in the Illicit Trade Protocol.103

Principles and guidance based on findings of highly qualified publicists on international law,104 which that have been adopted in environmental treaties, provide an understanding of international liability regimes to address damage or harm. The following are some of the features of a liability regime:

A. **A strong legal framework for liability that reaches all legal persons involves:**
   1. Strict responsibility/liability for operator (tobacco companies), as appropriate, for ultrahazardous activities or activities entailing risk;106
   2. Presumptions for causality for activities attributable to a sector (instead of single entity) may be established;107 and,
   3. Legal persons that are subjected to effective, dissuasive, and proportionate penalties for offenses or omissions.

B. **Mechanisms that allow for compensation:**108
   1. A back-up system of liability in case the industry is unable to pay (without prejudice to the state obtaining reimbursement from the operators);
   2. Insurance coverage or other financial guarantees from the operator or national insurance funds in its absence;109 and,
   3. Compensation funds or a similar mechanism of collective reparation where operators may be required to contribute.110

C. **Preventive mechanisms:**
   1. Increased use of health impact assessments, and precautionary and “polluter pays” principles are considered.111
V. How can governments make the industry pay for all the damages it has caused?

Being a unique product covered by a global treaty, tobacco products are typically covered by special regulatory laws which provide for administrative, civil, and criminal sanctions when violated. Governments need only to improve such laws and enforce them. Governments can also introduce laws that apply the “polluter pays” principle, wherein those responsible for damages should bear the cost of preventing the harm caused. Although this concept originated in the field of environment, this has been applied in tobacco control. For instance, based on the “polluter pays” principle, Thailand exacts a 2% surcharge from the tobacco industry in order to pay for health promotion programs.

Aside from special laws pertaining to tobacco, governments can turn to general laws relating to “breach of duties.” In most societies, a basic standard of care exists (e.g., reasonable person’s standard of ordinary care) to which a product manufacturer can be held to wherein failure to exercise this duty could be deemed negligence resulting in civil liability. In some civil law regimes, the “strict liability” rule applies to manufacturers of hazardous or harmful substances such as tobacco. As a result, the tobacco industry is held to a higher standard of care such that negligence need not be proven, and once an injury occurs, there is a presumption that the manufacturers are liable.

A. Regulate/impose obligations for implementation of substantive articles, ensure compliance, and impose liability for non-compliance (Article 5.3, Articles 6-11, 13, 15-18)

Some governments have stringent tobacco control measures with robust enforcement plans in place, including administrative investigation bodies and civil society participation. Cases have been filed to enforce smoke-free laws, advertising bans, labelling regulations, consumer protection laws, and anti-trust laws. Below are some examples of enforcement cases initiated by civil society that resulted in a positive ruling:

<table>
<thead>
<tr>
<th>Areas</th>
<th>Countries / Year Initiated</th>
<th>Party who Instigated</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enforcement of advertising ban</td>
<td>France, 2019</td>
<td>National Committee for Tobacco Control (CNCT), a civil society group</td>
<td>French court ordered Philip Morris and Ducati to pay €10,000 and prohibited them from displaying “Mission Winnow” logo in the races.</td>
</tr>
<tr>
<td>Enforcement of advertising ban</td>
<td>U.K., 2019</td>
<td>Action on Smoking and Health, Campaign for Tobacco-Free Kids, and Stopping Tobacco Organizations and Products</td>
<td>U.K.’s Advertising Standards Authority (ASA) ruled that BAT can no longer use its social media account to promote e-cigarettes (as this reaches the youth).</td>
</tr>
<tr>
<td>Enforcement of transparency rules (WHO FCTC Article 5.3)</td>
<td>EU, 2014</td>
<td>Corporate Europe Observatory, a civil society group</td>
<td>The EU Ombudsman declared that transparency rules that apply to health (DG Sante) should also apply to the rest of the European Commission, and that its failure to publish online meetings of its staff with the tobacco industry constitutes “maladministration.”</td>
</tr>
</tbody>
</table>

Government agencies are in the best position to enforce a law and make the tobacco industry liable for violations. They should be vigilant in holding corporations accountable for financial crimes, such as those involving taxes and corrupt practices, as these affect the investment climate.
Table 3. Sample actions taken by Parties to make the tobacco industry liable for violations

<table>
<thead>
<tr>
<th>Areas/Charge</th>
<th>Year</th>
<th>Party who Instigated</th>
<th>Outcome/Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax evasion</td>
<td>2019</td>
<td>Thailand – Attorney General’s Office</td>
<td>Thai criminal court ruled that Philip Morris is guilty of evading taxes for under-declaring cigarette imports from the Philippines and ordered it to pay $39.7 million.</td>
</tr>
<tr>
<td>Tax evasion</td>
<td>2019</td>
<td>Ukraine – National Police</td>
<td>State Fiscal Service settled the case by abolishing the notification for $23 million taxes and penalties based on Philip Morris Ukraine’s claim that it was granted conditional exemptions from import duties and VAT during the covered period.</td>
</tr>
<tr>
<td>Bribery/ Foreign Corrupt Practices Act</td>
<td>2014</td>
<td>United States – Securities and Exchange Commission</td>
<td>Department of Justice entered into non-prosecution agreements with both Alliance One International ($9.45 million) and Universal Leaf ($4.4 million), which were involved in paying bribes or improper payments to secure contracts in China, Greece, Indonesia, Kyrgyzstan, and Thailand.</td>
</tr>
</tbody>
</table>

B. Adopt a strong legal framework for liability that reaches all legal persons involved

Many developing countries do not have sufficiently strong legal frameworks for liability. A handful of countries have successfully taken action against the tobacco industry using existing or novel legal frameworks, including the U.S. (Master Settlement Agreement involving a legal settlement for five tobacco companies to pay about US $206B; Racketeer Influenced and Corrupt Organizations case) and Canada (class suits arising from Healthcare Cost Recovery Act, where the claims have reached about $120B). Recently, the Brazilian government filed a lawsuit against local affiliates of Philip Morris and British American Tobacco as manufacturers of hazardous products that caused harm in light of the deceptive conduct of the tobacco industry in the past decade. The case seeks recovery of costs and moral damages related to the top 26 diseases scientifically proven to be linked with smoking. Like many tobacco lawsuits, allegations include known facts such as concealment of evidence regarding the link between smoking and cancer, the addictive nature of smoking and dangers of passive smoking, the misleading marketing of “light/mild” cigarettes as safer products, and advertising and promotion aimed at the youth.

Support from the FCTC and some tools are available but strengthening legal frameworks will take time. One fundamental aspect is the design of effective and dissuasive penalties when developing tobacco control laws. Standards set for financial corporations in accordance with money laundering conventions can be a benchmark. Sanctions provided in accordance with anti-bribery conventions can also be reviewed. Most of the TTCs are covered by anti-corruption laws in the U.S., U.K., and other parties to the anti-bribery convention, and these laws provide sanctions that are effective, dissuasive, and proportionate, in accordance with the FCTC.

C. Require compensation for harms, e.g., recouping costs, seeking compensation or facilitating access to justice for victims (Article 19)

Seeking recompense from companies through courts is perhaps the most impactful way to make the tobacco companies pay. Some cases have resulted in not only payment of damages, but also the establishment of research funds, trust funds for victims, improved rules of procedure for claimants, and changes in policies. For example, circumstances surrounding the US flight attendants’ lawsuit (Broin, et al. Filing on behalf of a class of 60,000 or so flight attendants) lawsuit against the tobacco industry in the early 90s, hastened the adoption of in-flight smoking bans. As part of the settlement that was announced in 1997, the named plaintiffs secured $39.7 million in compensation; the rest of the class were given leeway to file individual claims, and a research fund was established. The flight attendants’ advocacy has influenced domestic laws.
laws that ultimately have global consequences. By 1997, smoking is banned in all domestic flights, and Australia, Canada, EU, and the US have agreements to ban inflight smoking. However, it was not until 2000 that US aviation law banned smoking in all inbound and outbound flights. Tobacco-related litigation is well-documented in the Civil Liability Toolkit discussed in Box 4, and will not be further discussed here.

It bears stressing that the legal systems of a vast majority of jurisdictions are unable to allow for successful litigation against the tobacco industry despite the catastrophic harms it has caused. Nevertheless, some form of compensation fund or mechanism has been considered. This has allowed reparation for harms of many forms and serve to reduce the externalities caused by tobacco. For instance, Thailand applied the “polluter pays” principle and requires tobacco companies to pay a 2% surcharge that goes into a health promotion fund, which includes funding tobacco control programs and empowering civil society to counter tobacco industry tactics. A significant portion of excise taxes in the Philippines is earmarked to fund the country’s universal health care program and alternative livelihood of farmers, in accordance with FCTC provisions.

FCTC guidelines recommend consideration for “dedicating revenue to tobacco-control programmes, such as those covering awareness raising, health promotion and disease prevention, cessation services, economically viable alternative activities, and financing of appropriate structures for tobacco control.” Forty-three (43) countries are dedicating proceeds or parts of taxes (including surcharges and fees) to health programs or tobacco control. However, governments have yet to use tax proceeds to compensate for actual harms caused. This compensation can be in the form of: payment for other damages suffered by the victims or their families; recouping the costs of harms to the environment, human rights, child labor or illicit trade; and costs of aggravating poverty, corruption, public deception, and food insecurity.

Many jurisdictions have adopted administrative compensation mechanisms. Workmen’s Compensation laws are adopted to facilitate workers’ claims and avoid lengthy processes just to receive compensation. The same rationale should apply to victims of tobacco-related harms. Compensation mechanisms typically require funds to be pooled and an administrative body to manage and release funds to beneficiaries when certain criteria are met. Disbursement mechanisms utilized for social welfare benefits could be tapped. Some examples include:

- Motor Vehicle Accident Fund (New Zealand): Financed with the country’s gas/diesel levy and administered by a government body.
- Mesothelioma Fund/Financial Services Compensation Scheme (FSCS) (U.K.): Funded with a levy from insurance companies and disbursed by the FSCS.
- Vaccine Injury Compensation Trust Fund (U.S.): Financed with a small amount of tax per vaccine sold to compensate anyone who is injured from it.

In the past decade, large transnational corporations that have inflicted far less devastation than the tobacco industry have been held accountable in many jurisdictions. Mostly initiated as suits by claimants or prompted by investigations by government agencies, these resulted in compensation via court settlements, government agreements, or legislation. These cases demonstrate the capacity of the legal system to accommodate liability regimes as well as reflect the challenges faced by litigants. Nevertheless, there is some legal basis in holding corporations liable for damages, either in strict liability, tort law or environmental law, in countries like India, Japan, and Mexico, but the tobacco industry has yet to be made to fully account for damages in these countries (see Tables 1 & 4).

VI. How can governments take actions towards preventive measures?

A. Require information to facilitate enforcement (Article 5.3)

Currently, few jurisdictions demand a comprehensive range of information from the tobacco industry. However, FCTC guidelines have elaborated on the scope of information to be required and recommended that governments provide public access to these (see Box 3). An even broader array of information needs to be added in response to technology developments and the emergence of new digital platforms.
Demanding transparency from the tobacco industry would address the dearth of evidence in holding the industry to account—a common challenge in investigation and prosecution. The need to protect capital markets and the trends in incorporating environmental, social, and governance (ESG) indicators in investment decisions, have resulted in frameworks of transparency for transnational companies. TTCs assert ESG alignment and claim to be transparent as these help improve investor perception, but these assertions are primarily based on self-reporting and can be properly tested when governments actually demand a comprehensive range of information in accordance with the FCTC (see Box 3). Notably, investors can also take action against tobacco companies for damages resulting from misleading statements in their ESG/sustainability reports.

The importance of transparency cannot be overstated even during the pandemic. For instance, if legally required information had been available with respect to all those that have received funds from the tobacco industry, it would have enabled governments to hold the perpetrators liable for the misinformation in relation to the “protective effect” of smoking/vaping during COVID-19, which was coupled with social media marketing of tobacco companies. Such an action could have prevented public confusion arising from unscrupulous marketing practices.

Giving the public access to a wide range of information from the tobacco industry is important for purposes of holding it to account. Civil society plays a role in analyzing the information provided, reporting violations, exposing anomalies, and using it for advocacy. In addition, the public needs a source of legally-mandated and accurate information, to avoid being deceived. This is because the tobacco industry is duplicitous and deceptive, and yet it continues to have avenues to address the public despite bans on advertising. For instance, Philip Morris markets IQOS as a “safer alternative;” however, in its legally-required disclosure to the U.S. Food and Drug Administration (FDA), it declared that switching to IQOS “has not been demonstrated… to reduce the risk of developing tobacco-related diseases compared to smoking cigarettes.” Although the FDA allowed IQOS to be sold, it qualified its permission, specifically prohibiting Philip Morris from misleading consumers that it is “FDA-approved” or that the FDA deems it to be safe.
Box 3. Information that should be required from the tobacco industry

1. **Persons:** Registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf, including lobbyists and entities where they hold memberships. (Article 5.3)

2. **Manufacturing:** General information on market volumes, trends, forecasts, and other relevant information; quantities of tobacco products and manufacturing equipment in the licensee's possession, custody or control kept in stock, in tax and customs warehouses under the regime of transit or trans-shipment or duty suspension as of the date of the request; revenue and pricing. (Article 6)

3. **Supply chain:** Information on manufacture, market share, and those listed in the Illicit Trade Protocol, including details on and from entities in the supply chain, e.g., those required for licensing, due diligence, and tracking and tracing purposes.

4. **Marketing:** Information on marketing expenditures and details about tobacco advertising, promotion, and sponsorship (TAPS), including, but not limited to:
   - The kind of TAPS, including content, form, and type of media.
   - The placement and extent or frequency of TAPS.
   - The identity of all entities involved in TAPS, including advertising and production companies.
   - In case of cross-border TAPS originating from a Party's territory, the territory or territories in which it is intended to be or may be received.
   - The amount of financial or other resources used for TAPS (Article 13).

5. **CSR/research:** Tobacco industry's so-called CSR activities and entities engaged in the same (Article 5.3); marketing expenditures and any other activity, such as research (research grants), policy submissions, funding of third parties/nongovernmental organizations (FCTC/COP8 (18)).

6. **Lobbying:** Expenses or activities on lobbying, philanthropy, and political contributions; initiatives to engage government, directly or indirectly, such as meetings with public officials, proposed partnerships, draft or proposed legislation, policy papers or offers of assistance. Names of employees and consultants, including former government employees; gifts, services or contributions extended directly or indirectly to public officials or persons related thereto; any political contributions made.

7. **Evidence:** Information that would support filing cases against the tobacco industry to hold it liable, e.g., revenue, scientific claims and studies, activities in foreign countries, scientific funding, public relations strategies, etc., in accordance with Article 19.

8. **Production:** Information on tobacco production, including tobacco industry practices and cultivation of tobacco.

9. **Other:** Activities of the tobacco industry that have an impact on the Convention or national tobacco control activities, or any information required to support tobacco control measures.

Source: Updated from SEATCA & HealthJustice Toolkit on Article 5.3 Implementation
B. Adopt clear codes or guidance in dealing with the tobacco industry and those furthering its interests: Avoid conflicts of interest, limit engagements, and reject partnerships and so-called CSR (Article 5.3)

The tobacco industry is not a stakeholder in the eyes of the FCTC. Early on, the WHO warned the public health community against participating in industry-initiated dialogues because the industry portrays such participation as endorsements and uses these as part of its publicity or even so-called CSR. Because of its colorful and long history of influencing policymakers to the detriment of public health, including inappropriate activities leading to reports of bribery and corruption, public officials must take every precaution as provided in treaty guidelines. Failure to manage conflicts of interest would result in policy capture and ultimately lead to weakening public trust in government.

Details in the treaty guidelines demand a higher level of precaution in dealing with the tobacco industry than those found in general codes of conduct that have been widely adopted in many jurisdictions. These include avoiding conflicts of interest, rejecting contributions of and partnerships with the tobacco industry, including its so-called CSR, as well as limiting interactions with it, unless strictly necessary for its regulation. In interpreting “those who are furthering the tobacco industry’s interests,” the WHO includes organizations that further the interests of the tobacco industry. This may include lobbyists, membership organizations with industry representatives, and those that are funded or supported by tobacco-related entities.

A few countries have specific guidelines on how to deal with the tobacco industry and those furthering its interests. In 2019, Australia issued guidance, aligned with current domestic codes of conduct that applies to public officials interacting with the tobacco industry. Some countries have adopted detailed rules of conduct in their tobacco control laws (Uganda) and national civil service regulations (Philippines). To address the tobacco industry’s use of foreign missions to undermine foreign tobacco control policy, the U.K. government issued special guidance that applies to tobacco-related dealings of public officials in overseas posts. The European Union’s (EU) Directorate-General For Health and Food Safety (DG Sante) adopted stringent measures to require, among others, transparency of all meetings involving the tobacco industry, in accordance with FCTC provision. Considering the profile of the tobacco industry and the treaty obligation, the EU Ombudsman recommends that the rest of the European Commission adopt a similar policy and declared that failure to do so constitutes “maladministration.”

Tobacco industry CSR is used to access policymakers and increase influence on policy decisions, which inevitably undermines public health. Throughout the COVID-19 pandemic, tobacco company donations have been publicized in a manner that promotes their image and shows an association with government agencies and public officials. The conflict is apparent because the tobacco industry offers donations on the one hand, but on the other, is seeking financial gain and pro-industry policies. In Indonesia, for instance, the industry was granted deferment of excise tax payments.

C. Remove or deny economic benefits (Article 5.3)

Governments routinely provide benefits to certain industries or sectors to promote economic growth. Examples include tax cuts, reduced fees, deferred payments, duty-free treatment, and even relaxed regulations for certain periods of time. Some even provide agricultural subsidies to the tobacco sector.

FCTC guidelines specifically recommend that governments do not grant benefits to the tobacco industry to run its business. Special treatment can be significant such as in Laos and the Philippines; and withdrawing can be difficult, but not impossible. For instance, Argentina’s Special Tobacco Fund, financed with a 7% charge on tobacco retail prices that goes into tobacco agriculture subsidies, will be shifted towards COVID-19 responses consistent with World Trade Organization (WTO) rules.

Denying incentives to the tobacco sector is best done as a preventive measure to avoid giving benefits to an industry that has yet to be held to account for the harms it continues to cause. Examples are the U.S. Doggett Amendment and EO 13193 which prohibit government funding from being used to promote tobacco exports or to undermine foreign tobacco control measures.
**Trade and investment**

The tobacco industry is excluded from benefits of the investor-state dispute settlement proceedings of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) among eleven (11) countries across the Pacific. This allows governments to bar tobacco industry access to a mechanism commonly enjoyed by all foreign investors.\(^{189}\) This language has been incorporated into some of the subsequent bilateral investment treaties (BITs) of Australia, which has historically excluded sales and distribution of tobacco from several of its free trade agreements.\(^{181}\) Some countries have deliberately treated tobacco as an unwelcome foreign investment, e.g., Turkey (U.S.-Turkey BIT),\(^{182}\) India (proposal in 2017),\(^{183}\) and China (announcement in 2016).\(^{184}\)

**Sustainable investment and divestment**

FCTC guidelines provide that countries that do not have a state-owned tobacco industry should not invest in the industry and related ventures.\(^{185}\) Not only does this remove conflicts of interest, it is also consistent with divesting from unhealthy assets for promoting sustainable investments,\(^{186}\) which takes ESG into account in investment profiles.\(^{187}\) In 2019, the EU required the financial sector (fund managers and advisers) to incorporate ESG issues into their investment analysis and recommendations and ensure that these are aligned with sustainable development.\(^{188}\) In 2017, members of the investment community,\(^{189}\) managing around US $3.8 trillion in assets, voiced support for stronger regulation around tobacco control.\(^{190}\)

Divesting is an important tool to hold the industry to account for its harms. Some governments and large portfolio managers have started divesting or removing tobacco from their portfolios (e.g., in Australia and EU)\(^{191}\) and find this to be a financially sound decision,\(^{192}\) because investors are increasingly becoming aware of the material risks involved in tobacco stocks such as regulatory, litigation, and supply chain risks.\(^{193}\) On the flip side of divesting is impact investing to support UN SDGs. This has been proposed in the context of tobacco, e.g., Tobacco Social Impact Bonds (TSIB), which are intended as financing tools to facilitate the transition from tobacco growing to other economically-viable alternative livelihoods.\(^{194}\)

**VII. What is the best way to make the tobacco industry pay during COVID-19?**

As governments attempt to stimulate the economy in response to the crisis, allocating or dedicating tobacco taxes or surcharges to address the harms caused, including health care costs, alternative livelihood, and partial compensation to victims, will not only help in economic recovery, but also contribute to attaining the UN SDGs. Increasing tobacco taxes for this purpose can play a key role as this would further reduce tobacco consumption and increase revenue.\(^{195}\)

Respiratory symptoms caused by COVID-19 have allowed the world to visualize the advanced stages of tobacco-related diseases and their cost implications.\(^{196}\) And the pandemic also revealed some of the more egregious behavior of the tobacco industry.\(^{197}\) For instance, it sought special treatment to be considered an “essential item” for the purpose of unhampered sales during the lockdown.\(^{198}\) It can be expected to continue demanding incentives or benefits for running its business, including its sale of “less harmful” products,\(^{199}\) and will inadvertently enjoy financial benefits from economic stimulus packages unless specifically excluded.\(^{200}\) This practice would be opposed to aligning COVID-19 responses with UN SDGs.

In the meantime, cigarette prices remain affordable in the developing world even in countries with the highest levels of tobacco consumption where tobacco excise has reached 70% of the retail price (e.g., Bangladesh, Philippines, and Ukraine ) (see Table 4.). Notably, only 25% of countries in the world have reached the recommended tobacco excise tax rate of 70% of retail price, most of which are in high-income countries.\(^{201}\) Moreover, investment analysts’ reports and smokers’ increased propensity to quit during the pandemic suggest that cigarette volume has decreased, which would lead to decreased government revenues, if tax remains unchanged.

This should herald an opportunity to increase tobacco taxes in any form appropriate in order to make up for the lost revenue, improve health outcomes, and secure sufficient revenues that can be earmarked. Taxes, charges or levies should be dedicated towards contributing to the economic package in a manner that aligns with treaty commitments and UN SDGs. Although the tobacco industry will argue,
as it almost always does, that it will lose business if prices are increased, it bears stressing that cigarettes are price inelastic and that assurance has been given to investors that the addictive nature of cigarettes will allow smokers to absorb price increases. Furthermore, the tobacco industry can be expected to link tax increases to smuggling by over-estimating the magnitude of illicit trade, even when evidence shows that capacity and corruption are main factors of smuggling, not taxes.

Increasing tobacco taxes for LMICs is a win-win solution for health and economic well-being. Earmarking is deemed a practical “health financing policy tool for political, fiscal or public health reasons.” Absent robust legal frameworks to hold the tobacco industry liable for harms during the crisis, earmarking of tobacco taxes can be used to partially serve this purpose as well as to keep the world on track with the UN SDGs.

Owing to the tobacco industry's publicity and so-called CSR efforts during the crisis, beneficiary policymakers may resist the imposition of stringent regulatory or tax measures on tobacco companies. Such instances need to be monitored and documented so that governments can further investigate the tobacco industry's behavior and demand information to facilitate regulation. Governments must also adopt policies to avoid conflicts of interest and require public officials to reject and de-normalize the tobacco industry’s so-called CSR.

Making the tobacco industry pay as part of the response to the pandemic is consistent with the call to action of the Committee on Economic, Social and Cultural Rights (ECOSOC): When State Parties devote their maximum available resources to the full realization of all economic, social and cultural rights, including the right to health, they must ensure that “the extraordinary mobilization of resources to address the COVID-19 pandemic provides the impetus for long-term resource mobilization towards the full and equal enjoyment of the economic, social and cultural rights enshrined in the Covenant. In so doing, they will lay the foundation for achieving the ideal enshrined in the Universal Declaration of Human Rights of achieving a world of free human beings enjoying 'freedom from fear and want.’”
### Table 4. Economic costs vs. tax in 10 priority countries of the Bloomberg Initiative

<table>
<thead>
<tr>
<th>Country</th>
<th>Economic Cost of Tobacco in million, US$/year</th>
<th>Tobacco Total Excise in million, US$/year</th>
<th>Excise Tax/Economic Costs*</th>
<th>Tax Level (%) of retail price</th>
<th>Percent of Tobacco Total Excise Allotted to Programs</th>
<th>Beneficiary Programs/Activities Relating to Health</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bangladesh</td>
<td>7,031</td>
<td>2,085</td>
<td>30%</td>
<td>71%</td>
<td>1%</td>
<td>Health, NCDs</td>
</tr>
<tr>
<td>Brazil</td>
<td>49,009</td>
<td>1,540</td>
<td>3%</td>
<td>83%</td>
<td>n/d</td>
<td>n/d</td>
</tr>
<tr>
<td>China</td>
<td>121,202</td>
<td>87,397</td>
<td>72%</td>
<td>56%</td>
<td>n/d</td>
<td>n/d</td>
</tr>
<tr>
<td>India</td>
<td>132,834</td>
<td>2,697</td>
<td>2%</td>
<td>54%</td>
<td>n/d</td>
<td>n/d</td>
</tr>
<tr>
<td>Indonesia</td>
<td>196,218</td>
<td>10,884</td>
<td>6%</td>
<td>59%</td>
<td>2%, 37.5%</td>
<td>Social and economic programs, national health insurance plan, health</td>
</tr>
<tr>
<td>Mexico</td>
<td>7,733</td>
<td>1,982</td>
<td>26%</td>
<td>67%</td>
<td>n/d</td>
<td>n/d</td>
</tr>
<tr>
<td>Pakistan</td>
<td>6,022</td>
<td>598</td>
<td>10%</td>
<td>56%</td>
<td>n/d</td>
<td>n/d</td>
</tr>
<tr>
<td>Philippines</td>
<td>16,646</td>
<td>2,546</td>
<td>15%</td>
<td>71%</td>
<td>5%, 50%, 100%</td>
<td>Support for tobacco farmers and tobacco-growing regions, universal health coverage, health facilities enhancement program</td>
</tr>
<tr>
<td>Ukraine</td>
<td>12,946</td>
<td>1,411</td>
<td>11%</td>
<td>75%</td>
<td>n/d</td>
<td>n/d</td>
</tr>
<tr>
<td>Vietnam</td>
<td>12,656</td>
<td>634</td>
<td>5%</td>
<td>37%</td>
<td>2%</td>
<td>Vietnam National Tobacco Control Fund, tobacco control</td>
</tr>
</tbody>
</table>

*This provides a general indication only. The dataset comes from two different sources taken at different times with varying currencies. Foreign exchange rates used were based on the year the data was taken, where that information is available. The data on economic costs have not been adjusted for the time lapsed. Excise tax levels were taken from latest publicly-available WHO data.
Box 4. Article 19 Civil Liability Toolkit

The Toolkit is an online resource that demonstrates approaches that would, among others, help improve access to justice for victims and facilitate government efforts in seeking reparation of harms including reimbursement of health care costs and claims for damages in civil cases. It also provides case briefs of landmark cases in tobacco litigation, such as the Master Settlement Agreement (U.S.), Letourneau class action case (Canada), and Engle class action (U.S.).

Particularly, the tools focus on three types of approaches:

a. Health Care Cost Recovery Suits: Tools include case studies and sample legislation/rules to allow victims to confer a direct cause of action, provide clear liability standards, let courts use statistical evidence, reverse the burden of proof, and allow for joint and several liability of defendants.

b. Access to Justice on a Collective and Individual Basis: This focuses on procedural rules that serve to reverse the burden of proof, allow the use of statistical evidence in proving causation, extend limitation periods, and encourage joinders by multiple claimants.

c. Public Interest Litigation for Enforcement Action: Tools include case studies featuring a variety of laws that allow filing of public litigation cases to advance tobacco control, such as Racketeer Influenced and Corrupt Organizations (RICO) Act (U.S.), Trade Practices Act (Australia), Code of Public Health & Code of Penal Procedure (France), and Constitution (India).

A list of resources external to the Toolkit are also featured such as:

a. Tobacco Industry’s Internal Documents housed at the University of California, San Francisco;

b. WHO FCTC decisions and reports relating to FCTC Article 19;


d. Public Health Law Center’s explainer on the MSA;

e. U.S. Department of Justice website on tobacco litigation;

f. Physicians for Smoke-Free Canada’s timeline of tobacco litigation in Canada;

g. Campaign for Tobacco-Free Kids’ database of tobacco lawsuits around the world;

h. Corporate Accountability’s campaign efforts to make the tobacco industry pay; and,

i. Available resources on tobacco industry challenges and tactics in judiciary/court (e.g., Friedman, 2006; Proctor, 2006).

Acknowledgements and Authorship

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Endnotes


3 WHO FCTC. Reporting instrument of the WHO FCTC. Available at https://www.who.int/fctc/reporting/EN_WHO-FCTC-core-questionnaire_2020.pdf?ua=1 (accessed on 15 July 2020).Has any person in your jurisdiction launched any criminal and/or civil liability action, including compensation where appropriate, against any tobacco company in relation to any adverse health effect caused by tobacco use?

4 WHO FCTC. Reporting instrument of the WHO FCTC. Available at https://www.who.int/fctc/reporting/EN_WHO-FCTC-core-questionnaire_2020.pdf?ua=1 (accessed on 15 July 2020).Any legislative, executive, administrative, and/or other action against the tobacco industry for full or partial reimbursement of medical, social, and other relevant costs related to tobacco use in your jurisdiction?


21 Campaign for Tobacco-Free Kids. Big tobacco is exploiting COVID-19 to market its harmful products. Available at https://www.tobaccofreekids.org/
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According to Leppan, et al.: "China is the world's largest tobacco producer, contributing 43 percent of global production. Three countries – China, Brazil and India – account for two-thirds of all global tobacco leaf production. The USA and the European Union, formerly major tobacco producers, currently both account for four percent each of the world's tobacco. Developing countries, including Zimbabwe, Tanzania, Malawi, Argentina, Indonesia and Pakistan, also experienced significant growth in the sector over the last decade. Percent increases in production were greatest, however, in four countries in Africa (Mozambique, Zambia, Mali and Ghana) and in Cambodia, suggesting that the diversification of sources of unmanufactured tobacco by transnational tobacco companies continues (Eriksen et al. 2012)."

See UN SDC 15 for further details on how tobacco production affects land.

text_download/en/ (accessed on 10 July 2020).


During an international coastal clean-up in 2015.


During an international coastal clean-up in 2015.


Gilmore AB, et al. (2019). Tobacco industry's elaborate attempts to control a global track and trace system and fundamentally undermine the Illicit Trade Protocol. Tobacco Control. Vol. 28, No. 2, pp. 127-40. Available at https://tobaccocontrol.bmj.com/content/28/2/127 (accessed on 10 July 2020); “...-estimates suggest that approximately 60%-70% of the illicit market is tobacco with specific figures varying from 58% (2016, EU level, industry funded data) to 69%-73% (seizure data for 2011 and 2012 at global level and 2014 and 2016 at UK level).”

Note that 98% is the estimate in Tobacco Atlas.


Tooves B (2018). Human Rights and the Tobacco Industry: An Unsuitable Alliance. International Journal of Health Policy and Management. Vol. 7, No. 7, p. 677. Retrieved from https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6037492/ (accessed on 10 July 2020); “...-it includes a responsibility not to harm human rights through the products that it brings on the market... this makes a very clear case: by producing, marketing and selling a product that is deadly by design, the tobacco industry flagrantly violates this human rights responsibility. As a consequence, producing, marketing and selling tobacco is fundamentally incompatible with human rights. Human rights responsibilities thus force the tobacco industry to go out of business.”
61 The Danish Institute for Human Rights (04 May 2017). Human Rights assessment in Philip Morris International. Retrieved from https://www.humanrights.dk/news/human-rights-assessment-philip-morris-international (accessed on 10 July 2020). “Tobacco is deeply harmful to human health, and there can be no doubt that the production and marketing of tobacco is irreconcilable with the human right to health. For the tobacco industry, the UNGPs therefore require the cessation of the production and marketing of tobacco.”


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86 Data were culled out from: WHO (2019). WHO report on the global tobacco epidemic. Table 8.1 - Tobacco tax revenues. Available at https://www.who.int/tobacco/global_report/en/ (accessed on 09 July 2020); local currency data were converted into US$ using the currency rate of the year indicated in Table 8.1, specifically December 31 exchange rate. Exchange rates used were retrieved from https://www.xe.com/currencytables/from=USD&date=2018-12-31
88 Ibid.
89 Ibid. – “All revenue from the ad valorem excise tax (10% of retail price) and most revenue from the specific excise tax (2,100 CUP per pack) on tobacco products are used to fund the national health insurance program. Additionally, 16% of the specific excise revenue funds sports.”
90 Ibid. – “2% of federal tobacco excise tax revenue is allocated to a variety of social and economic programs, half of which supports the national health insurance plan [(JKN), under excise law PKM 222/2017]. In addition, 37.5% of local excise tax revenue (the local excise is 10% of the central excise tax) is allocated to health, which also funds the JKN.”
91 Ibid. – “From total excise tobacco tax revenues, 40% are directed to the Ministry of Health for prevention and treatment of NCD and 18% to the National Development Sports Fund.”
92 Ibid. – “5% of the total tobacco and vapor product excise tax revenue is allocated to provinces to support tobacco farmers and tobacco growing regions. 50% of the remaining revenue and 100% of the incremental revenue from tax increases will be allocated as follows: 80% of this money for PhilHealth to fund universal health coverage, the other 20% for health facilities and other health care programs.”
93 Ibid. – “2% of excise on tobacco and alcohol are directed to the ThaiHealth fund. Another 2% of excise revenues are directed to a Sports Promotion fund.”
96 Ibid., Article 19.1.
97 Ibid., Article 19.2.
98 Ibid., Article 19.3.
99 Ibid., Article 19.5.
100 Ibid., Article 5.3.
103 WHO (2013). Protocol to eliminate illicit trade in tobacco products. Geneva, Switzerland: World Health Organization. Retrieved from https://apps.who.int/iris/bitstream/handle/10665/80873/9789241505246_eng.pdf?ua=1 (accessed on 10 July 2020). – Article 14.4: “In order to enhance international cooperation in combating the criminal offences related to illicit trade in tobacco, tobacco products and manufacturing equipment, Parties are encouraged to review their national laws regarding money laundering, mutual legal assistance and extradition, having regard to relevant international conventions to which they are Parties, to ensure that they are effective in the enforcement of the provisions of this Protocol.”
105 Ibid. – Note that responsibility and liability regime is assigned to the “operator” without prejudice to States incurring international responsibility for its failure to comply with obligations to establish its civil liability mechanisms including insurance mechanisms, compensation funds, and other remedies and safeguards.
106 Ibid., Articles 4 & 5; note that Article 9 provides for limits to responsibility for harm to avoid discouraging investments and still ensure adequate reparation of damage.
107 Ibid., Article 7.
108 Ibid. – Compensation must be complete. Article 23 explains that reparation for damage to environment is separate from those relating to death, injury or loss of economic value.
109 Ibid., Article 10.
110 Ibid., Article 12.
111 Ibid., Article 13.
114 OECD (2019). Resolving Foreign Bribery Cases with Non-Trial Resolutions Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention. Retrieved from https://bitstream/handle/10665/80873/9789241505246_eng.pdf?jsessionid=5055FFC7721EE928CEDEF9809DDAFBE5?sequence=1 (accessed on 10 July 2020). – Article 14.4: “In order to enhance international cooperation in combating the criminal offences related to illicit trade in tobacco, tobacco products and manufacturing equipment, Parties are encouraged to review their national laws regarding money laundering, mutual legal assistance and extradition, having regard to relevant international conventions to which they are Parties, to ensure that they are effective in the enforcement of the provisions of this Protocol.”
115 Ibid. – Note that responsibility and liability regime is assigned to the “operator” without prejudice to States incurring international responsibility for its failure to comply with obligations to establish its civil liability mechanisms including insurance mechanisms, compensation funds, and other remedies and safeguards.
116 Ibid., Articles 4 & 5; note that Article 9 provides for limits to responsibility for harm to avoid discouraging investments and still ensure adequate reparation of damage.
117 The rules of international law may also provide for the engagement of strict responsibility of the State on the basis of harm or injury alone. This type of responsibility is most appropriate in case of ultra-hazardous activities, and activities entailing risk or having other similar characteristics.” (emphasis supplied)
118 Ibid., Article 7.
119 Ibid. – Compensation must be complete. Article 23 explains that reparation for damage to environment is separate from those relating to death, injury or loss of economic value.
120 Ibid., Article 10.
121 Ibid., Article 12.
122 Ibid., Article 13.
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125 WHO (2003). WHO Framework Convention on Tobacco Control, Article 17. Geneva, Switzerland: World Health Organization. Available at https://www.who.int/fctc/text_download/en/ (accessed on 11 July 2020). – “Provision of support for economically viable alternative activities – Parties shall, in cooperation with each other and with competent international and regional intergovernmental organizations, promote, as appropriate, economically viable alternatives for tobacco workers, growers and, as the case may be, individual sellers.”


128 OECD Tax Classification categorizes surcharges and certain fees as part of taxation.


130 Tobacco companies have been charged settlement payments, not surcharges.


138 Recommended during EMRO consultations, February 2020.


sas.org/sas/sas-indices) which try to incorporate ESG. Notably, SASB indices are used as basis for Philip Morris-Funded FSPW’s commissioned Tobacco Transformation Index, which is intended to measure how the tobacco industry has changed.


149 In re Article 5.3 Guidelines on de-normalizing CSR, there is a need to raise awareness about the true nature of so-called CSR.


152 Ibid., Recommendation 4.


154 Ibid.

155 WHO FCTC (2008). Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry. Retrieved from https://www.who.int/fctc/guidelines/article_5_3.pdf?ua=1 (accessed on 29 April 2020). – Article 20.4 of the Convention “requires, inter alia, Parties to promote and facilitate exchanges of information about tobacco industry practices and the cultivation of tobacco. In accordance with Article 20.4(c) of the Convention, each Party should endeavour to cooperate with competent international organizations to establish progressively and maintain a global system to regularly collect and disseminate information on tobacco production and manufacture and activities of the tobacco industry which have an impact on the Convention or national tobacco control activities.”


158 Typically reported as part of “engagement with stakeholders.”


161 OECD (2003). Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service. Retrieved from https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0316 (accessed on 10 July 2020). – “Serving the public interest is the fundamental mission of governments and public institutions. Citizens expect individual public officials to perform their duties with integrity, in a fair and unbiased way. Governments are increasingly expected to ensure that public officials do not allow their private interests and affiliations to compromise official decision-making and public management. In an increasingly demanding society, inadequately managed conflicts of interest on the part of public officials have the potential to weaken citizens’ trust in public institutions.”


165 WHO FCTC (2008). Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies...
with respect to tobacco control from commercial and other vested interests of the tobacco industry. Retrieved from https://www.who.int/fctc/guidelines/article_5_3.pdf?ua=1 (accessed on 29 April 2020).

167 WHO (2018). Handbook for non-state actors on engagement with WHO. Geneva, Switzerland: World Health Organization. Retrieved from https://www.who.int/about/collaborations/non-state-actors/Handbook-for-non-State-actors-on-engagement-with-WHO.pdf?ua=1 (accessed on 10 July 2020). – “WHO does not engage with the tobacco industry or with non-state actors that work to further the interests of the tobacco industry. The latter includes but is not limited to: entities and subsidiaries engaged in the manufacturing, distribution and/or sale of tobacco or tobacco-related products; entities working to specifically further the interests of the tobacco industry through lobbying, advertising, legal advice or similar activities; entities being funded, supported or influenced in their governance by tobacco-related entities; and entities having tobacco industry or their representatives among their members.”


182 Ibid.


187 Ibid.

188 UNEP Finance Initiative (07 March 2019). EU policy makers achieve political agreement on investor disclosures and ESG. Retrieved from https://www.unepfi.org/news/industries/investment/eu-policy-makers-achieve-political-agreement-on-investor-disclosures-and-esg/ (accessed on 10 July 2020). – “On Thursday 7 March 2019, the EU Parliament and Council achieved political agreement on requiring ESG integration by financial market participants. Clarifying the fiduciary duties of investors has been a priority for UNEP FI for many years. These rules are an essential part of EU efforts to make the financial sector a powerful actor in fighting climate change and meeting the sustainable development goals by further aligning the industry with the Paris Agreement and the UN 2030 Agenda for Sustainable Development. The EU aims to ‘connect finance with [the] needs of the real economy’. This latest EU development represents a major milestone from a regulatory standpoint. The new regulation will provide consistency across EU member states by clarifying that duties require investors to consider financially material environmental, social, and governance (ESG) factors in their investment decision-making. It also sets out how financial actors should inform beneficiaries about their compliance with the integration of ESG risks and opportunities.”

189 53 investors, health systems, pension funds, and insurers, led by AMP Capital, AXA, CalPERS, and SCOR.


194. Hurley G & Tarlton D (08 May 2018). Opinion: How incentivizing small tobacco farmers can change livelihoods. Retrieved from https://www.devex.com/news/opinion-how-incentivizing-small-tobacco-farmers-can-change-livelihoods-92669 (accessed on 11 July 2020). – “Under TSIB, UNDP identifies countries where there is strong buy-in from local tobacco farmers and communities, and high-level political support. Ecological considerations also matter, such as the climatic and soil conditions for alternative crops. Using social impact bonds to address alternative livelihoods for tobacco farmers is a new concept, but is aligned with the Addis Ababa Action Agenda on Financing for development, which calls on the international community to develop innovative finance models to address sustainable development challenges. As the international community searches for new ways to finance the ambition of the 2030 Agenda for Sustainable Development, innovative finance models that involve both public and private finance providers are increasingly seen as important approaches.”


210. Specific & ad valorem


214. Ibid.

215. Ibid. – “2% of federal tobacco excise tax revenue is a variety of social and economic programs, half of which supports the national health insurance plan [JKN], under excise law PKM 222/2017]. In addition, 37.5% of local excise tax revenue (the local excise is 10% of the central excise tax) is allocated to health, which also funds the JKN.”

216. Ibid. – “5% of the total tobacco and vapor product excise tax revenue is allocated to provinces to support tobacco farmers and tobacco growing regions. 50% of the remaining revenue and 100% of the incremental revenue from tax increases will be allocated as follows: 80% of this money for PhilHealth to fund universal health coverage, the other 20% for a health facilities enhancement program.”

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238 Corporate Accountability website. Available at https://www.corporateaccountability.org/tobacco/ (accessed on 08 February 2020).